

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FRANK D. MCCOLLUM, III,

Plaintiff,

v.

LUPE VALDEZ, Dallas County Sheriff,

Defendant.

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Civil Action No. **3:18-CV-1778-L**

ORDER

On October 28, 2019, the Fifth Circuit remanded the appeal of this action for the court to determine whether Plaintiff Frank D. McCollum’s (“Plaintiff”) Notice of Appeal (Doc. 17) was timely filed. *See* Doc. 21. United States Magistrate Judge Rebecca Rutherford entered Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“First Report”) (Doc. 25) on December 10, 2019, recommending that the court find that Plaintiff deposited his Notice of Appeal after June 20, 2019 and, therefore, it was untimely.* On January 24, 2020, Plaintiff filed his Objections (Doc. 28) to the First Report, asserting that he deposited his Notice of Appeal with the law librarian, as prison rules require, on June 19, 2019, and, thus, his Notice of Appeal was timely filed.

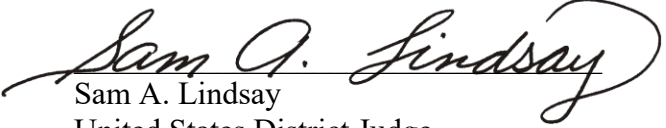
Considering Plaintiff’s Objections, this court recommitted this action to Magistrate Judge Rutherford to determine: (1) whether the process described by Plaintiff is the system designed for depositing legal mail at his prison unit; and (2) whether he deposited his Notice of Appeal pursuant to the required process by June 20, 2019. *See* Doc. 29. After further inquiry and consideration,

* The court entered a final judgment in this action on May 21, 2019. Doc. 16. Plaintiff was required to file his notice of appeal no later than 30 days after final judgment was entered. Fed. R. App. P. 4(a)(1)(A). Thus, Plaintiff was required to file his notice of appeal no later than June 20, 2019.

Magistrate Judge Rutherford entered a second Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“Second Report”) (Doc. 34) on March 16, 2020, recommending that the court find that Plaintiff timely filed his Notice of Appeal on or before June 20, 2019. No objections were filed.

Having reviewed the file, record in this action, and the Second Report (Doc. 34), the court determines that the findings and conclusions of the Magistrate Judge are correct, and accepts them as those of the court. Accordingly, the court **concludes** that Plaintiff’s Notice of Appeal (Doc. 17) was timely filed.

It is so ordered this 31st day of March, 2020.


Sam A. Lindsay
United States District Judge